

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDWARD THOMAS,

Plaintiff,

v.

RANDY GROUNDS, Warden, et al.,

Defendants.

Case No.: C 13-4367 CW (PR)

ORDER OF SERVICE OF AMENDED  
COMPLAINT

INTRODUCTION

Plaintiff Edward Thomas, a state prisoner incarcerated at California State Prison-Corcoran, filed a pro se civil rights action pursuant to 42 U.S.C. § 1983, alleging the violation of his constitutional rights by prison officials at Salinas Valley State Prison (SVSP) where he was formerly incarcerated. On December 6, 2013, the Court found that Plaintiff's complaint alleged two cognizable claims and dismissed the remaining noncognizable claims with leave to amend. On December 27, 2012, Plaintiff filed his First Amended Complaint (1AC), which the Court now reviews.

DISCUSSION

I. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.

1 § 1915A(a). In its review, the court must identify any cognizable  
2 claims and dismiss any claims that are frivolous, malicious, fail  
3 to state a claim upon which relief may be granted or seek monetary  
4 relief from a defendant who is immune from such relief. Id.  
5 § 1915A(b)(1), (2). Pro se pleadings must be liberally construed.  
6 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
7 1988).

8 To state a claim under 42 U.S.C. § 1983, a plaintiff must  
9 allege two essential elements: (1) that a right secured by the  
10 Constitution or laws of the United States was violated, and  
11 (2) that the alleged violation was committed by a person acting  
12 under the color of state law. West v. Atkins, 487 U.S. 42, 48  
13 (1988).

14 Liability may be imposed on an individual defendant under 42  
15 U.S.C. § 1983 if the plaintiff can show that the defendant's  
16 actions both actually and proximately caused the deprivation of a  
17 federally protected right. Lemire v. California Dept. Corrections  
18 & Rehabilitation, 726 F.3d 1062, 1074 (9th Cir. 2013); Leer v.  
19 Murphy, 844 F.2d 628, 634 (9th Cir. 1988); Harris v. City of  
20 Roseburg, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives  
21 another of a constitutional right within the meaning of § 1983 if  
22 he does an affirmative act, participates in another's affirmative  
23 act or omits to perform an act which he is legally required to do,  
24 that causes the deprivation of which the plaintiff complains.  
25 Leer, 844 F.2d at 633. Under no circumstances is there respondeat  
26 superior liability under § 1983. Lemire, 726 F.3d at 1074. Or,  
27 in layman's terms, under no circumstances is there liability under  
28 § 1983 solely because one is responsible for the actions or

omissions of another. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989); Ybarra v. Reno Thunderbird Mobile Home Village, 723 F.2d 675, 680-81 (9th Cir. 1984).

A supervisor may be liable under § 1983 upon a showing of personal involvement in the constitutional deprivation or a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation. Redman v. County of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc) (citation omitted). A supervisor therefore generally "is only liable for constitutional violations of his subordinates if the supervisor participated in or directed the violations, or knew of the violations and failed to act to prevent them." Taylor, 880 F.2d at 1045. This includes allegations that a supervisor implemented "a policy so deficient that the policy itself is a repudiation of constitutional rights and is the moving force of the constitutional violation." Redman, 942 F.2d at 1446; Jeffers v. Gomez, 267 F.3d 895, 917 (9th Cir. 2001).

## II. Plaintiff's Allegations

In the Court's Order of Dismissal, it found that Plaintiff had stated two cognizable claims: (1) excessive force against Defendants Gasgonia, Martinez and Hopark, and (2) retaliation against Defendants Lopez, Hedrick and Berlinger. In regard to the noncognizable claims, the Court noted the following:

(1) Plaintiff's claims for reviewing and denying administrative appeals were not cognizable, unless Plaintiff could allege that the individuals who denied them had the authority and opportunity to prevent a constitutional violation; (2) Plaintiff's due process claims for the denial of his right to present evidence and

1 witnesses at his administrative hearings were not cognizable  
2 because he did not indicate which Defendant or Defendants were  
3 responsible; (3) Plaintiff's dangerous conditions claim based on  
4 being forced to accept a cell-mate from a rival gang was not  
5 cognizable because he did not indicate which Defendants caused  
6 this violation; (4) Plaintiff's allegation that unidentified  
7 Defendants refused to remove gang status references from his  
8 central file, violating his rights to equal protection and to be  
9 free from cruel and unusual punishment, were not cognizable  
10 because he did not allege what any Defendant did to violate these  
11 rights.

12 In his 1AC, Plaintiff names the individuals responsible for  
13 each claim. However, Plaintiff's due process claim based on  
14 reviewing, denying and delaying his administrative appeals is  
15 still not cognizable. See Ramirez v. Galaza, 334 F.3d 850, 860  
16 (9th Cir. 2003) (denying claim of loss of a liberty interest in  
17 processing of inmate appeal because inmates lack a constitutional  
18 entitlement to a specific prison grievance procedure). Therefore  
19 this claim is dismissed without leave to amend against Brinklele,  
20 R. Mojica (#1), Mojica (#2), E. Medina, C. Martella, W.L. Muniz,  
21 V.J. Solis, B. Hedrick, and T. Berlinger.

22 Plaintiff's 1AC alleges cognizable claims for due process  
23 violations at his rules violations hearings against: Sgt. J.  
24 Stevens and Lt. M. Kircher for the March 22, 2012 hearing; R.L.  
25 Martinez for the September 24, 2012 hearing; Lt. J. Stevenson for  
26 the February 27, 2013 hearing; and Lt. J. Mensing for the April  
27 22, 2013 hearing.  
28

1 Plaintiff's 1AC states a dangerous conditions claim for  
2 allegedly forcing Plaintiff to accept a rival gang member as a  
3 cellmate against Defendants J. Aboytes, B. Hopark, Warden R.  
4 Grounds, Captain D. Asuncion, B. Hedrick and T. Berlingeri. The  
5 Equal Protection claim against these Defendants is dismissed in  
6 light of the fact that Plaintiff's allegations do not state an  
7 Equal Protection violation.

8 Plaintiff's 1AC states a dangerous conditions claim for  
9 allegedly failing to remove all gang status references from  
10 Plaintiff's central files against Warden Grounds, W.L. Muniz, L.  
11 Trexler, B. Hedrick, N.E. Walker, D. Asuncion, V.J. Solis and T.  
12 Berlingeri.

### 13 CONCLUSION

14 For the foregoing reasons, the Court orders as follows:

15 1. Plaintiff's complaint fails to state a cognizable due  
16 process claim for reviewing, delaying or denying his  
17 administrative grievances and fails to state a cognizable Equal  
18 Protection claim. These claims are dismissed without leave to  
19 amend further because Plaintiff has had an opportunity to remedy  
20 their deficiencies and has failed to do so.

21 2. Plaintiff's original complaint alleged a cognizable claim  
22 for excessive force against Defendants Gasgonia, Martinez and  
23 Hopark and a cognizable retaliation claim against Defendants  
24 Lopez, Hedrick and Berlingeri.

25 3. Plaintiff's 1AC alleges the following cognizable claims:  
26 (1) a due process claim for violations at his rules violations  
27 hearings; (2) a dangerous conditions claim for forcing Plaintiff  
28 to accept a rival gang member as a cellmate; and (3) a dangerous

1 conditions claim for failing to remove gang status references from  
2 Plaintiff's central file.

3 4. In order to encourage the just, speedy and inexpensive  
4 determination of 42 U.S.C. § 1983 cases filed in this district,  
5 the parties may waive their right to proceed before a district  
6 judge and consent to proceed before a magistrate judge for all  
7 purposes. Attached to this Order is a Notice of Option to Consent  
8 to Proceed Before United States Magistrate Judge and an Order  
9 requiring the parties to notify the Court whether they consent or  
10 decline to so proceeding. The parties shall complete the  
11 requisite consent or declination form and return it to the Court  
12 no later than thirty days from the date of this Order.

13 5. The Clerk of the Court shall mail a Notice of Lawsuit and  
14 Request for Waiver of Service of Summons, two copies of the Waiver  
15 of Service of Summons, a copy of the complaint (docket no. 1), the  
16 1AC (docket no. 7) and all attachments thereto, a copy of this  
17 Order, the Order Dismissing Claims with Leave to Amend, (docket  
18 no. 6), and a copy of the form "Consent or Declination to  
19 Magistrate Judge Jurisdiction" to SQSP employees Gasgonia,  
20 Martinez, Hopark, Lopez, Hedrick, Berlingeri, Stevens, Kircher,  
21 Stevenson, Mensing, Aboytes, Grounds, Asuncion, Muniz, Trexler,  
22 Walker, and Solis. The Clerk shall also mail a copy of the  
23 complaint, the 1AC and a copy of this Order and the Order  
24 Dismissing Claims with Leave to Amend to the California Attorney  
25 General's Office. Additionally, the Clerk shall mail a copy of  
26 this Order to Plaintiff.

27 6. Defendants are cautioned that Rule 4 of the Federal Rules  
28 of Civil Procedure requires them to cooperate in saving  
unnecessary costs of service of the summons and complaint.

1 Pursuant to Rule 4, if Defendants, after being notified of this  
2 action and asked by the Court, on behalf of Plaintiff, to waive  
3 service of the summons, fail to do so, they will be required to  
4 bear the cost of such service unless good cause be shown for the  
5 failure to sign and return the waiver forms. If service is  
6 waived, this action will proceed as if Defendants had been served  
7 on the date that the waiver is filed, except that pursuant to Rule  
8 12(a)(1)(B), Defendants will not be required to serve and file an  
9 answer before sixty days from the date on which the request for  
10 waiver was sent. (This allows a longer time to respond than would  
11 be required if formal service of summons is necessary.)

12 Defendants are advised to read the statement set forth at the  
13 foot of the waiver form that more completely describes the duties  
14 of the parties with regard to waiver of service of the summons.  
15 If service is waived after the date provided in the Notice but  
16 before Defendants have been personally served, the answer shall be  
17 due sixty days from the date on which the request for waiver was  
18 sent or twenty days from the date the waiver form is filed,  
19 whichever is later.

20 7. Defendants shall answer the complaint in accordance with  
21 the Federal Rules of Civil Procedure. The following briefing  
22 schedule shall govern dispositive motions in this action:

23 a. No later than thirty days from the date the answer  
24 is due, Defendants shall file a motion for summary judgment or  
25 other dispositive motion. If Defendants file a motion for summary  
26 judgment, it shall be supported by adequate factual documentation  
27 and shall conform in all respects to Federal Rule of Civil  
28 Procedure 56. If Defendants are of the opinion that this case  
cannot be resolved by summary judgment, they shall so inform the

1 Court prior to the date the summary judgment motion is due. All  
2 papers filed with the Court shall be promptly served on Plaintiff.

3 At the time of filing the motion for summary judgment or  
4 other dispositive motion, Defendants shall comply with the Ninth  
5 Circuit's decision in Woods v. Carey, 684 F.3d 934 (9th Cir.  
6 2012), and provide Plaintiff with notice of what is required of  
7 him to oppose a summary judgment motion.

8 b. Plaintiff's opposition to the motion for summary  
9 judgment or other dispositive motion shall be filed with the Court  
10 and served on Defendants no later than twenty-eight days after the  
11 date on which Defendants' motion is filed.

12 Before filing his opposition, Plaintiff is advised to read  
13 the notice that will be provided to him by Defendants when the  
14 motion is filed, and Rule 56 of the Federal Rules of Civil  
15 Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (party  
16 opposing summary judgment must come forward with evidence showing  
17 triable issues of material fact on every essential element of his  
18 claim). Plaintiff is cautioned that because he bears the burden  
19 of proving his allegations in this case, he must be prepared to  
20 produce evidence in support of those allegations when he files his  
21 opposition to Defendants' summary judgment motion. Such evidence  
22 may include sworn declarations from himself and other witnesses to  
23 the incident, and copies of documents authenticated by sworn  
24 declaration. Plaintiff will not be able to avoid summary judgment  
25 simply by repeating the allegations of his complaint.

26 c. Defendants shall file a reply brief no later than  
27 fourteen days after the date Plaintiff's opposition is filed.  
28



1 d. The motion shall be deemed submitted as of the date  
2 the reply brief is due. No hearing will be held on the motion  
3 unless the Court so orders at a later date.

4 8. Discovery may be taken in this action in accordance with  
5 the Federal Rules of Civil Procedure.

6 9. All communications by Plaintiff with the Court must be  
7 served on Defendants, or Defendants' counsel once counsel has been  
8 designated, by mailing a true copy of the document to Defendants  
9 or Defendants' counsel.

10 10. It is Plaintiff's responsibility to prosecute this case.  
11 Plaintiff must keep the Court informed of any change of address by  
12 filing a separate paper with the Clerk headed "Notice of Change of  
13 Address," and must comply with the Court's orders in a timely  
14 fashion. Failure to do so may result in the dismissal of this  
15 action for failure to prosecute pursuant to Federal Rule of Civil  
16 Procedure 41(b).

17 11. Extensions of time are not favored, though reasonable  
18 extensions will be granted. Any motion for an extension of time  
19 must be filed no later than fourteen days prior to the deadline  
20 sought to be extended.

21 IT IS SO ORDERED.

22 Dated: 4/11/2014

23   
24 CLAUDIA WILKEN  
25 UNITED STATES DISTRICT JUDGE  
26  
27  
28